Supreme Court, U.S.
FILED
MAR 21 1991
OFFICE OF THE CLERK

(3)

No. 90-1284

In the Supreme Court of the United States

OCTOBER TERM, 1990

INTERCONTINENTAL LIFE INSURANCE COMPANY,
PETITIONER

v.

LOU R. LINDBLOM, RESPONDENT

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

---

REPLY BRIEF FOR THE PETITIONER

ANDREW L. FREY
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 778-0602
Counsel for Petitioner
InterContinental Life
Insurance Company

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

TABLE OF AUTHORITIES

Cases: Page

Browning-Ferris Indus. of Vermont, Inc. v. *Kelco Disposal, Inc.*, 109 S. Ct. 2909 (1989) 3

General American Life Ins. Co. v. *Simmons*, No. 90-73 (Mar. 18, 1991) 4

Massachusetts Mutual Life Ins. Co. v. *Collins*, No. 90-244 (Mar. 18, 1991) 4

Pacific Mutual Life Ins. Co. v. *Haslip*, No. 89-1279 (decided Mar. 4, 1991) ..... *passim*

In the Supreme Court of the United States

OCTOBER TERM, 1990

No. 90-1284

INTERCONTINENTAL LIFE INSURANCE COMPANY,
PETITIONER

v.

LOU R. LINDBLOM, RESPONDENT

On Petition for a Writ of Certiorari to the Supreme Court of Alabama

---

REPLY BRIEF FOR THE PETITIONER

We agree with respondent that this Court's decision in *Pacific Mutual Life Ins. Co.* v. *Haslip*, No. 89-1279 (decided Mar. 4, 1991), forecloses the first question presented in our petition concerning the constitutionality of Alabama's procedures for awarding punitive damages. But respondent is quite wrong in asserting that *Haslip* is dispositive of the second question—whether the award violates the separate due process prohibition against excessive punitive damages. Rather, because the Court in

Haslip for the first time expressly recognized a due process limitation on the *amount* of punitive damages that may be imposed on a defendant and also gave at least some indication of the contents of that limitation—and because that due process limitation was not applied in this case by the Alabama Supreme Court—further proceedings are warranted. As this Court does whenever it has announced a new rule of law that is relevant to a question presented in a pending certiorari petition, the Court should grant the petition, vacate the judgment below, and remand the case for reconsideration.

1. We think it beyond dispute that this Court in *Haslip* recognized that the Due Process Clause imposes a limit on the amount of punishment that may be inflicted upon a defendant through the medium of punitive damages. Most of the Court's opinion is devoted to the separate question whether Alabama's procedures "impose[] a sufficiently definite and meaningful constraint on the discretion of Alabama fact finders in awarding punitive damages" (slip op. 18). The Court concluded that the Alabama procedures satisfied these standards (*id.* at 18-19) and went on to observe that "Pacific Mutual * * * had the benefit of the full panoply of Alabama's procedural protections" in that the post-verdict review was conducted in accordance with those procedures (*id.* at 19-20).

The Court did not end its opinion at that point, however. It turned—in the last substantive paragraph of its opinion (slip op. 20)—to the question whether "the punitive damages award in this case" was unconstitutionally excessive. (The certiorari petition in *Pacific Mutual* separately presented a chal-

lenge to the excessiveness of the punitive award. See Pet. i (question 3)). The Court compared the amount of punishment imposed on Pacific Mutual with the compensatory damages needed to make Ms. Haslip whole for her injuries and with Alabama's legislatively authorized fines for insurance fraud, sustaining the exaction on the basis that, though it may have been "close to the line," it did not "cross the line into the area of constitutional impropriety" (slip op. 20).[1]

2. The proper disposition of this case follows as a matter of course from the Court's recognition of a due process limit on the amount of punitive damages awards. The Alabama Supreme Court could not have determined whether the amount of the award here is unconstitutionally excessive in light of the considerations identified by this Court in *Haslip* because the lower court did not have the benefit of this Court's decision in *Haslip* at the time it decided this case. Simple fairness requires that petitioner be given the opportunity to present this issue to the Alabama Supreme Court for reconsideration in view of *Haslip*.

The fact that this case, like *Haslip*, comes from the Alabama state courts provides no reason for denying certiorari. *Haslip*'s conclusion that Alabama's procedures satisfy procedural due process

---

[1] The Court's determination that the Due Process Clause prohibits excessive punitive damages awards is, of course, in accord with a line of precedent holding that the Due Process Clause is violated by the imposition of excessive penalties, including those imposed in civil actions brought by private parties. See *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 109 S. Ct. 2909, 2921 (1989) (citing cases); *id.* at 2923 (Brennan, J., concurring) (citing cases).

does not speak at all to the separate question whether any particular award is unconstitutionally excessive. After all, if the same procedures had been followed in *Haslip* but had produced an award of $10 million or even $2 million, it seems quite clear that this Court, which viewed a punishment of $1 million as "close to the line," would have found a violation of the excessiveness limit imposed by the Due Process Clause. For purposes of deciding whether to vacate and remand a case involving a substantive excessiveness question, there simply is no rational basis for distinguishing between cases from Alabama and cases from other states, many of which were remanded for reconsideration on March 18, 1991. In sum, petitioner should be afforded the opportunity to obtain meaningful review of its claim that the punitive award here is impermissibly excessive under *Haslip*.[2]

3. Finally, a remand in this case would not be an empty gesture. Comparison of the instant case with *Haslip* raises grave concerns about the rationality of the amount of punishment imposed against Inter-

---

[2] We note that the Court recently denied certiorari in two Alabama cases seeking review of punitive damages awards. See *General American Life Ins. Co.* v. *Simmons*, No. 90-73 (Mar. 18, 1991); *Massachusetts Mutual Life Ins. Co.* v. *Collins*, No. 90-244 (Mar. 18, 1991). The questions presented in those cases focused on the lack of standards limiting the jury's discretion in fixing the amount of the award—the procedural due process issue conclusively determined in *Haslip*. Because neither petition squarely challenged a punitive award on the separate ground that it was unconstitutionally excessive, that disposition was wholly appropriate. The petition in this case, by contrast, *does* separately raise the excessiveness issue.

Continental for its failure to pay the $10,000 benefit under the policy on Ms. Rodenberry's life. Indeed, given that the amount of punitive damages was "close to the line" in *Haslip*, it surely crosses that line here.

Many of the principal differences in the two cases that require different outcomes are discussed in the petition (at 11-13). We add only the following observations in light of the considerations identified in *Haslip* and the arguments made by respondent in opposition to the petition.

First, the sole amount of compensatory damages sought by respondent against InterContinental in this case consisted of the $10,000 death benefit that was alleged to be due under the policy but not paid (plus interest); the complaint did not ask for additional damages for pain and suffering.[3] R. 70. Thus, it seems clear that respondent's award consists of $12,400 in compensatory damages and the balance of the $1,000,000 total judgment in punitive damages—a ratio of 79 to 1. This contrasts dramatically with the ratio of 4 to 1 that the Court found "close to the line" in *Haslip*.[4]

---

[3] The respondent did seek an additional $100,000 in compensatory damages against defendants Milton L. Culver and the Culver Agency in connection with a negligence count not brought against InterContinental. R. 3-4.

[4] Respondent suggests (Opp. 12-13) that it is not possible to ascertain the punitive component of the award because the jury returned a general verdict. But the Court confronted the same situation in *Pacific Mutual* and identified the amount of punitive damages by subtracting from the total award the amount of compensatory damages sought by the plaintiff

Second, there was no dispute in *Haslip* that Pacific Mutual's agent was guilty of egregious misconduct that caused serious embarrassment, inconvenience, and anguish to Ms. Haslip. (The only question before the Court was whether the concededly outrageous conduct was ascribable to Pacific Mutual for purposes of punishment.) Try as she may, respondent's attempt to equate the "misconduct" here with that in *Haslip* is unavailing. There was not even arguably any fraud in the instant case, simply an unjustified failure to investigate adequately and to pay what in the end was held to have been a valid claim for insurance benefits.

Our discussion of the degree of InterContinental's culpability is not, contrary to respondent's suggestion (Opp. 13), an attempt to "re-litigate the case in this Court." We do not question the facts found be-

---

(slip op. 3 n.2). The same approach can and should be utilized here.

Respondent also suggests (Opp. 13) that the punitive damages are no more disproportionate here than they were in *Haslip* because in that case the total verdict was over 200 times greater than the plaintiff's out-of-pocket expenses (unreimbursed hospital costs). This argument overlooks the fact that here respondent had *no* out-of-pocket expenses. In any event, this Court made it quite clear in *Haslip* that it was not treating the case as one with a 200 to 1 ratio. The Court explicitly noted that Haslip's counsel sought $200,000 in compensatory damages for the suffering caused to his client by the hospital's reaction to her uninsured status, leaving not less than $840,000 in punitive damages. It then stated that "[f]or present purposes, we accept this description of the verdict"—which, in context, surely means that the case was being treated as one involving a ratio of punitive to compensatory damages of slightly over 4 to 1. Slip op. 3 n.2; see also *id.* at 20.

low; we simply address those findings because they bear upon the rationality of the punishment inflicted upon InterContinental. Any misconduct here plainly was far less deserving of punishment that the misconduct in *Haslip*.

In closing, this case involves a substantially greater ratio of punitive to compensatory damages than that in *Haslip*, imposed for conduct that was far less worthy of punishment. If the due process right recognized in *Haslip* to be free of irrationally excessive punishment is to be afforded any content whatever, this judgment must be substantially reduced. And more to the present point, InterContinental should be afforded the opportunity to have its arguments considered by the Alabama courts in the new light shed by the *Haslip* decision.

CONCLUSION

The petition for a writ of certiorari should be granted, the judgment below vacated, and the case remanded for reconsideration in light of *Haslip*.

Respectfully submitted.

ANDREW L. FREY
Mayer, Brown & Platt
2000 Pennsylvania Ave., N.W.
Washington, D.C. 20006
(202) 778-0602
Counsel for Petitioner
InterContinental Life
Insurance Company

MARCH 1991